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DONNA CORBELLO

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DONNA CORBELLO, an individual,

Plaintiff,

vs.

THOMAS GAETANO DEVITO, an
individual, *et al.*,

Defendants.

Case No. 2:08-cv-00867-RCJ-PAL

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE A CERTAIN EXHIBIT
ATTACHED TO PLAINTIFF'S
MOTION TO STRIKE NEW
DEFENDANTS' *OBJECTIONS TO
PLAINTIFF'S NEW ARGUMENTS
SUUBMITTED IN HER REPLY BRIEF
IN SUPPORT OF HER REQUEST FOR
RECONSIDERATION OF THE
COURT'S DISCOVERY ORDER AND
OPPOSITION TO NEW
DEFENDANTS'S REQUEST FOR
LEAVE TO RESPOND TO
PLAINTIFF'S NEW MATERIAL
UNDER SEAL***

Plaintiff Donna Corbello, by her attorneys, and pursuant to the *Stipulated Protective Order* (Doc. 94) entered into by the parties, and the Court's *Protective Order Governing Confidentiality of Documents* entered on January 5, 2009 ("Order Regarding Sealing Requirements") (Doc. 95), herewith requests leave to file a certain document under seal as an exhibit to her motion to strike New Defendants' *Objections to Plaintiff's New Material and New Arguments Submitted in Her Reply Brief in Support of Her Request for Reconsideration of the Court's Discovery Order and Opposition to New Defendants' Request for Leave to Respond to Plaintiff's New Material* (Docs. 491 & 493).

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to her obligations under the *Stipulated Protective Order* and *Order Regarding Sealing Requirements*, Plaintiff seeks an order permitting her to file the following document under seal, which was produced by Defendant Eric S. Elice ("Elice"), and marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" thereby, and which she intends to attach as an exhibit to her motion to strike as referenced above:

- The relevant portions of Defendant Elice's responses to interrogatories propounded upon him by Plaintiff.

I. ARGUMENT

There is an exception to the normal presumption of access to judicial records, for "sealed discovery document[s] [attached] to a non-dispositive motion," such that "the usual presumption of the public's right of access is rebutted." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179-1180 (9th Cir. 2006) (citing *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). The public has less of a need for access to court records attached only to non-dispositive motions because those documents are often "unrelated, or only tangentially related, to the underlying cause of action." *Id.* (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)). Moreover, "public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials." *Id.* (citing *Phillips*, 307 F.3d at 1213). Finally, when a district court grants a protective order to seal documents during discovery, "it already has determined that

1 ‘good cause’ exists to protect this information from being disclosed to the public by balancing
 2 the needs for discovery against the need for confidentiality.” *Id.* Accordingly, “good cause”
 3 exists for the filing of the foregoing documents under seal.

4 Pursuant to the *Stipulated Protective Order* herein, Plaintiff has an obligation to maintain
 5 the confidentiality of any document marked “CONFIDENTIAL” or “HIGHLY
 6 CONFIDENTIAL” by an opposing party, and the document identified above was so marked by
 7 Defendant Elice. Accordingly, Plaintiff may not file the document with the Court without
 8 obtaining an Order and/or filing it under seal. Whereas, Plaintiff’s motion to compel is not a
 9 dispositive motion, the filing of this document under seal falls within the exception to the general
 10 presumption of public access carved out by the courts of this Circuit for documents attached to
 11 non-dispositive motions. Accordingly, leave to file the subject document under seal should be
 12 granted.

13 **II. CONCLUSION**


14 IN VIEW OF THE ABOVE, Plaintiff respectfully requests that her *Motion for Leave to*
 15 *File Certain Exhibits to Plaintiff’s New Defendants’ Objections to Plaintiff’s New Material and*
 16 *New Arguments Submitted in Her Reply Brief in Support of Her Request for Reconsideration of*
 17 *the Court’s Discovery Order Under Seal (Docs. 491 & 493)* be granted.

18 Dated: April 11, 2011

19 RESPECTFULLY SUBMITTED:

20
 21 /s/John L. Krieger
 22 Gregory H. Guillot
 23 George L. Paul
 24 John L. Krieger
 Robert H. McKirgan
 Attorneys for Plaintiff, Donna Corbello

25 IT IS SO ORDERED:

26
 27 
 28 UNITED STATES MAGISTRATE JUDGE
 DATED: April 15, 2011

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I, Gregory H. Guillot, hereby certify that on April 11, 2011, I electronically filed the foregoing document and this *Certificate of Service* with the Clerk of Court using the CM/ECF system which will send notifications of such filing to the following:

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